

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 466 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ABBASI N ATAULLA & ORS

Versus

USMANBHAI IBRAHIMBHAI & ORS

Appearance:

MR PRASHANT G DESAI for Petitioner

MR AT THAKORE for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 06/02/98

ORAL JUDGEMENT

This is an appeal against the Order dated 22nd December, 1989, passed by the learned City Civil Judge, Court No. 10, Ahmedabad in Civil Suit No. 5717 of 1988. The suit was filed somewhere in 1989 by respondent Nos. 1,2 and 3 for disqualifying and removing the respondent Trustee from administering 'Mulla Kasam Saheb Roza' and

'Masjid Trust' under Section 50 of the Bombay Public Trust Act. In that suit, ancillary reliefs were also claimed. During the pendency of the Suit, prayer for temporary injunction was also made vide Application Exh. 5 on which the trial Court vide impugned order restrained defendant No. 1 from acting as Mutawali, who was appointed under the scheme and he was further restrained from exercising his special rights conferred under the law and the scheme. He was further directed to handover the books of account and other accounts in respect of Trust to Plaintiff No. 1 - Usmanbhai Ibrahimbhai, who was permitted to run the Trust in consultation with other trustees, including the Defendants. The said Plaintiff No. 1 Usmanbhai was authorised to act as an interim Mutawali and as Managing Trustee, during pendency, final hearing and disposal of the Suit. That is the order under appeal. While admitting the appeal and issuing "Rule" in Civil Application No. 3168 of 1989, this Court stayed the operation of the impugned order and made following order to operate during the pendency of Appeal.

"Rule. Learned advocate Mr. Thakkar waives service for opponents Nos. 1,2 & 3. Mr. Bakshi, AGP waives service for Opponent No. 4

Taking into consideration the facts and circumstances of the case, the operation of the impugned order dated 22-12-1989 is stayed and it is ordered that pending hearing and final disposal of the Appeal from Order;

(i) instead of applicant No. 1 Abbasi Naimtulla Ataulla (with his consent), his son applicant No. 2 Abbasi Rizaullahak Naimtulla would act as Mutawalli of the Trust property;

(ii) it is agreed that he would call the meetings of all the Trustees on every Sunday at 4 P.M.;

(iii) he would record the proceedings of the meetings in a Minute Book;

(iv) recording of the proceedings would be signed by all the Trustees who are present in the meeting;

(v) if there are any objections by the Trustees, that also would be recorded in the Minute Book.

Mr. Trivedi, learned advocate appearing on behalf of the applicants, states that the applicants have deposited in the Bank the entire amount belonging to the Trust and further states that the accruing income would be deposited in the Bank.

Mr. Trivedi further states that applicant No. 2 would see that the books of account upto date are prepared and audited within two months from today. He further states that it would be open to the Trustees to inspect the books of account on the day when the meeting is held. Mr. Trivedi further states that applicant No. 2 would take steps for recovering the arrears of rent from the tenants and try to reconstruct the roof of the Dargah and Masjid in accordance with the Scheme for which a discussion would be held in the meeting.

As the suit is filed in 1988, the trial Court is directed to expedite the hearing of the Suit and dispose it of as far as possible within six months from today. Mr. Trivedi, learned advocate appearing on behalf of the applicant (appellants) and Mr. Thakkar, learned advocate appearing for the opponents (respondents) state that their counter parts or parties would not ask for any adjournment at the time of hearing of the suit.

Rule made absolute to the aforesaid extent. There shall be no order regarding costs. "

Since then, almost eight years have elapsed and the administration of the Trust is continued to be managed in terms of the interim order passed by this Court. At the time when hearing of the case was called out, the learned advocate for respondent inviting attention of the Court to the effect that the Court had directed the trial Court to expedite the hearing of the Suit and dispose of the same within six months from the date of making of the order, yet the Suit has not yet been heard inasmuch as it has not even been placed on the Board for hearing. However, he was candid enough to state that in the aforesaid circumstances, if the suit is expedited by bringing it on the Daily Board, there will be no objection to the continuance of the interim order passed by this Court until the pendency of the decision of the Suit, as the order is already operating for such a long period. In the aforesaid circumstances, this appeal is disposed of by directing that the order passing by this Court on 7-2-1990 in Civil Application No. 3168 of 1989, part of which has been quoted above, shall remain in force until pendency of the Suit. The trial Court is

directed to place the Suit No. 5717 of 1988 in the Daily Hearing Board of the month of March 1998 and shall thereafter dispose of the Suit as far as possible within six months; as directed by the Court earlier.

It is further clarified that when the aforesaid order was made certain statements were made on behalf of the appellants that the Applicant No. 2 who was allowed to work as Administrator/Trustee in place of his father Applicant No. 1, that the books of account upto date are prepared and audited within 2 months from the date of the order, that it would be open for trustees to inspect the books of account on the day when such meeting is held, that the applicant will take steps for recovering the arrears of rent from the tenants and shall try to reconstruct the roof of the Dargah and Masjid in accordance with the Scheme. If any complaint is made to the trial Court about breach of any of these assurance given before this Court, the trial Court shall decide those complaints after giving opportunity to the respective parties in accordance with law, without being influenced by the fact that this Court has substituted interim injunction in place of earlier one granted by it. The learned advocate for appellant drew attention of the Court to the fact that appellants have also filed a Civil Suit being Civil Suit No. 628 of 1985 in the Court of Ahmedabad City Civil Court for removal of the present Plaintiff from the Trust as a Trustee and that too is pending final disposal. The said Suit being older than the Suit filed by the plaintiff, should also be heard and tried together. This prayer appears to be reasonable and the Civil Suit No. 628 of 1985 is also directed to be placed for hearing in the month of March, 1998 alongwith the aforesaid suit.

Accordingly, this appeal stands disposed of in the aforesaid terms. There shall be no order as to costs.
